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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHAN KURT GIPP

Appeal 2009-014875
Application 10/643,740
Technology Center 2100

Before ROBERT E. NAPPI, JONI Y. CHANG and
GREGORY J. GONSALVES, *Administrative Patent Judges*.

CHANG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1-9 and 11-34. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Exemplary Claim

Appellant claims a method, a system, and a machine-readable medium that provides instructions, for allocating system resources. Claim 1 is representative of the subject matter on appeal (reproduced below with the numbering in brackets):

1. A method comprising:

[1] creating, in a computer system, a resource consumer having a plurality of fields associated with the resource consumer, wherein the plurality of fields includes a consumer type field, a flavor field and a place field, the resource consumer including at least one of a process and a thread;

[2] assigning the resource consumer one of a set of flavors;

[3] determining whether the resource consumer is limited to receiving resources including hardware and software resources from a certain one of a set of resource providers, wherein each of the set of resource providers has one of the set of flavors;

[4] if the resource consumer is limited to receiving resources from the certain one of the set of resource providers, marking the plurality of fields to indicate that the resource consumer is limited to receiving resources from the certain one of the set of resource providers; and

[5] allocating a resource to the resource consumer from one of the set of resource providers whose flavor matches the flavor assigned to the resource consumer.

(App. Br. 22).¹

*Rejection on Appeal*²

The Examiner rejected claims 1-9 and 11-34 under 35 U.S.C. § 103(a) as being unpatentable over Shaffer (WO 03/038545 A2, May 8, 2003) and Breidenbach (US 2003/0084085 A1, May 1, 2003). (Ans. 3).

Appellant's Contentions

Appellant contends that the Examiner erred in rejecting claims 1-9 and 11-34 under 35 U.S.C. § 103(a) as being unpatentable over Shaffer and Breidenbach. (Suppl. Br. 2).³ To support his arguments, Appellant produces two new figures in the Supplemental Brief, and states that figure 1 is a block diagram representation of the computer system described by Shaffer and figure 2 is a diagram of Appellant's system. (Suppl. Br. 4-6). According to Appellant, Shaffer does not show claim element [2] because:

Schaffer does not disclose an intermediate mapping between resource providers and resource consumers using flavors as shown in FIG. 2 and claimed in claims 1 and 17. The use of flavors adds a layer of abstraction between the resource consumer and the resource provider, which is not present in the scheme shown in Shaffer.

(Suppl. Br. 6).

¹ All references to Appeal Brief are to the Brief filed February 9, 2009.

² On this appeal, we are not reviewing the rejection under 35 U.S.C. § 112, second paragraph, set forth in the final Office action, because the Examiner's Answer did not include the rejection and the Examiner indicates that the amendment after final filed on January 6, 2009, has overcome the rejection (see Advisory Action issued on January 14, 2009).

³ All references to Supplemental Brief are to the paper filed on March 24, 2009, in response to the Notification of Non-Compliant Appeal Brief dated March 9, 2009 (correcting Sections 6 and 7 of the Appeal Brief).

Appellant also alleges that claim element [3] is not described because Schaffer does not disclose “an intermediate mapping” as shown in figure 2. Appellant asserts that figure 2 “shows a two-way association of resource providers and resource consumers using flavors as described and claimed” contrary to Shaffer’s system as shown in figure 1. (Suppl. Br. 5). Appellant further contends that Shaffer does not describe claim elements [4] and [5] because “Shaffer allocates tasks indiscriminately to computer platforms” rather than matching the flavor to the resource consumer. (Suppl. Br. 7).

Appellant argues independent claims 1 and 17 together, and for other independent claims (i.e., claims 6, 11, 14, 22, 27, and 30), Appellant merely reiterates similar arguments made for claims 1 and 17. (Suppl. Br. 7-11). Furthermore, Appellant is not arguing any dependent claim separately. Therefore, we select claim 1 as the representative claim to decide the appeal of this rejection. 37 C.F.R. § 41.37(c)(1)(vii).

Issue on Appeal

The issue is whether Appellant has shown that the Examiner erred in rejecting claims 1-9 and 11-34 under 35 U.S.C. § 103(a) as being unpatentable over Shaffer and Breidenbach.

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellant’s arguments. We adopt the Examiner’s findings set forth in the Examiner’s Answer and concur with the conclusion reached by the Examiner regarding claims 1-9 and 11-34. We disagree with Appellant’s contention that the

Examiner erred in rejecting claims 1, 2, 4-11, 13-20 and 22-27 under 35 U.S.C. § 103(a) as being unpatentable over Shaffer and Briedenbach.

In particular, we disagree with Appellant's contention that claim element [2] ("assigning the resource consumer one of a set of flavors") requires "an intermediate mapping between resource providers and resource consumers using flavors" as shown in figure 2 of the Supplemental Brief. Appellant's original disclosure does not contain the figure and the specification does not describe such intermediate mapping. Therefore, we agree with the Examiner's finding that claim element [2] does not require "an intermediate mapping between resource providers and resource consumers using flavors" as shown in figure 2 of the Supplemental Brief. *See In re Paulson*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (an inventor must define specific terms with "reasonable clarity, deliberateness, and precision" in order to be his own lexicographer, as opposed to merely describing "in a general fashion certain features"). Similarly, we find that claim element [3] does not require such intermediate mapping.

We further disagree with Appellant's assertion that since there is a difference between figure 1 and figure 2 of the Supplemental Brief, then Shaffer does not teach the argued claim limitations. Figure 1 presented by Appellant in the Supplemental Brief does not appear to be an accurate representation of Shaffer's computer system. For example, figure 1 of the Supplemental Brief does not show the associations between Shaffer's tasks, task types, task type codes and resource load values (e.g., Shaffer 8, lines 2-10). Regardless whether there is a difference between Appellant's figures, the Examiner's interpretation of the claim elements is consistent with Appellant's specification. Appellant states that "resource consumers may be

either a process or a thread” and “a set of flavors” may include application, support or operating system. (Spec. 5, lines 14 and 21-22; and Suppl. Brief 5). Shaffer describes a method for dynamic allocation of processing tasks using variable performance hardware platforms. (Shaffer, abstract).

The Examiner equates Shaffer’s task to the claim term “resource consumer” and equates Shaffer’s task types and computer resource values to the claim term “a set of flavors.” (Ans. 9). Moreover, Shaffer describes that the task may be a process (e.g., an automated call process) and the task types may be application specific (e.g., a tone generation and a call progress tone detection for the automated call process). (Shaffer 8, lines 1-10). Shaffer also teaches assigning each task a task type and a computer resource value. (Shaffer 8, lines 4-5 and 20-21).

We further disagree with Appellant’s contention that “Shaffer allocates tasks indiscriminately to computer platforms.” Shaffer specifically describes that “[t]he categorization of tasks 140 into types allows individual tasks 140 to be assigned to a computer platform 148 according to the ability of a resource or resources 148 associated with the computer platform 148 to perform that type of task 140.” (Shaffer 8, lines 7-10, figs. 1-2). Shaffer further teaches that the computer platform determines whether the task type is one that is supported by the computer platform. (Shaffer 8, lines 25-30). As such, we agree with the Examiner’s finding that Shaffer and Breidenbach describe the argued claim elements.

For the foregoing reasons, Appellant have not shown error in the Examiner’s rejection of claims 1-9 and 11-34 under 35 U.S.C. § 103(a) as being unpatentable over Shaffer and Breidenbach. Therefore, the rejection of claims 1-9 and 11-34 is sustained.

CONCLUSION

Appellant has not shown that the Examiner erred in rejecting claims 1-9 and 11-34 under 35 U.S.C. § 103(a) as unpatentable over Shaffer and Breidenbach.⁴

DECISION

We affirm the Examiner's rejection of claims 1-9 and 11-34 under 35 U.S.C. § 103(a) as being unpatentable over Shaffer and Breidenbach.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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⁴ Should there be further prosecution of the present claims, we recommend that the Examiner rejects claims 17-29 under 35 U.S.C. § 101 because the claims are directed to non-statutory subject matter. *See Subject Matter Eligibility of Computer Readable Media*, 1351 Off. Gaz. Pat. Office 212 (Feb. 23, 2010); *see also In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter).